BRIEF IN SUPPORT OF FOREGOING PETITION FOR WRIT OF CERTIORARI

In view of the complicated fact situation herein, with its many angles and ramifications and the many state and legal question involved, it is impossible for us to present this petition and brief in as short form as we desire. As provided in Rule 38, Revised Rules of the Supreme Court of the United States, as amended, subsection 2, we are including our supporting brief in the petition, in the interest of brevity and to save repetition.

The petition contains (a) *Opinion Below*, (b) *Jurisdiction*, (c) *Questions Presented*, (d) *Statement*, (e) *Reasons for Granting the Writ*. The brief to follow will contain (a) *Statutes Involved*, (b) *Summary of Argument*, (c) *Argument*, (d) *Conclusion*, (e) *Appendix*.

Statutes Involved

The pertinent statutes are set forth in the Appendix, *infra*, pp. 49 s.s..

Summary of Argument

The effect of Federal Acts. Amey Thlocco was a full blood enrolled Seminole Indian. She was restricted by reason of her status, (a) quantum of blood, and (b) further declared "mentally incompetent" to look after her business affairs by courts in Oklahoma having jurisdic-

tion over her person and estate. (See Congressional Acts, Appendix, *infra*, pp. 48 s.s.).

Her moneys came to her from restricted funds from (a) her full blood Indian father's allotment, and (b) her own allotment. Through defalcation of these funds by her guardian the lands in question came to her in lieu of these funds. The change in the form of the property did not divest it of its trust character and the substitute takes the nature of the original trust and is still restricted. *Three Foretops* v. *Ross, County Treasurer*, 235 P. 334; *United States* v. *Pearson, County Treasurer*, 231 Fed. 270; *Ward* v. *United States*, (10 Cir.) 139 Fed. (2) 79; *United States* v. *Williams*, (10 Cir.) 139 Fed. (2) 83.

It makes no difference in what state her property is located. Since the restriction is a personal one and the restrictions against alienation run against her as an Indian as well as against her lands, and the restrictions were created by Congressional Acts, Texas state laws could not operate to remove such restrictions. *Murray* v. *Ned*, 135 Fed. (2) 135. Wherever situated the land, or an interest in the land should only be sold or conveyed by approval of the proper court in Oklahoma or by the Secretary of Interior, or both. *United* v. *Brown*, 8 Fed. (2) 564; Here the Magnolia claims a valid legal trust was created by Amey Thlocco with Kenneth Mainard as trustee. At the time of the execution of the deed in question the Act of January 27, 1933 (Appendix, *infra*, pp. 57-62), authorizing the creation of a trust of property

of restricted Indians only through approval of the Secretary of the Interior, was in force. Since this purported trust was not approved by the Secretary of the Interior it was wholly void.

The opinion violated the full faith and credit clause of the Constitution of the United States, Section I of Article 4; also Rule 17 of Federal Rules of Civil Procedure; in that it refused to accept Amey Thlocco's status as an incompetent as declared by proper Oklahoma courts.

Federal courts which have no probate authority cannot pass upon the status of competency of one already adjudicated an incompetent by a proper court of the state of her residence. (See citations under Section 4, Reasons for Granting the Writ.)

It is against the public policy of the State of Texas to divest a duly adjudicated incompetent citizen of another state of property in Texas without ancillary guardianship proceedings as provided by the Texas statutes. Articles, 4285, 4286, Revised Statutes of Texas. (Appendix, *infra*, p. 64).

Article 7425a, Revised Statutes of Texas, (Appendix, *infra*, p. 65) is a statute passed by the Texas Legislature, changing the common law rule of notice and of innocent purchaser. It is so indexed and codified and was not intended to repeal or modify the Texas statutes applying to Guardian and Ward. (See citations under Section 4, Reasons for Granting the Writ.)

Article 7425a *supra*, was erroneously applied to the fact situation here. The result of the opinion is to wipe out resulting and constructive trusts in Texas so far as the laws of notice are concerned. This was not the intent of the statute and is contrary to Texas decisions. Rodriguez v. Vallejo, 157 S. W. (2) 172.[10] The purported trust here was not an express trust. If not an express trust, then the Magnolia could not have been an innocent purchaser without notice, in which event the decision would have been in favor of Amey Thlocco as admitted in the Circuit Court's opinion. (See definitions of express, resulting and constructive trusts, cited under Section 8, Reasons for Granting the Writ.)

The Magnolia was not an innocent purchaser since it had actual notice of Amey's ownership of the res through its lease buyer, Dunaway, in Wewoka, Oklahoma, and also had notice of such facts which would put a reasonably prudent person on notice and which facts upon inquiry would have disclosed Amey's ownership.

Nor was it an innocent purchaser as found in the opinion under the holdings of the Texas decisions in *Houston Oil Company* v. *Hayden et al.*, 135 S. W. 1142, and *Humble Oil & Refining Co.* v. *Campbell*, 69 Fed. (2) 667.

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[10] **Rodriguez v. Vallejo, 157 S. W. (2) 172, holds: "Appellants invoke the provisions of Art. 7425a, Vernon's Ann. Civ. St. as follows: (statute omitted) * * * (2) We hold that Art. 7425a has no application to transfer by trustees of a title acquired by operation of law through a resulting trust, where, as in this case, the vendee takes with notice of the trust."**

The lease was void in its inception in Oklahoma. The trial court properly found that the purported sale to Shunatona did not comply with the pertinent Oklahoma statutes (Appendix, *infra*, p. 66) nor was it approved by the Secretary of the Interior. Shunatona knew all the facts of Amey's ownership; the lease was unenforceable and void in his hands. He could not validate it by sending it across Red River into Texas and trasferring it to one claiming to be an innocent purchaser.

An Indian by reason of her incompetent status, (a) enrolled full blood, (b) adjudicated mental incompetency, could not ratify or validate a void lease merely by accepting from a faithless guardian royalty funds received from the lease by the guardian and commingled with other funds before she received them. (See citations under Section 9, Reasons for Granting the Writ.) Moreover, the Federal court judgments in Oklahoma contain savings clauses in Ameys' favor and could not be pleaded as a bar against her, particularly since the Magnolia was not a party to those suits.

Argument

We think it unfortunate that a legal controversy involving property and the status of a full blood restricted Indian should have arisen in a state where so far as we can find in checking the Federal Reports no similar or remotely kindred question has been presented before. Oklahoma has within its borders many tribes of Indians and

its Supreme Court and the Federal courts, district and circuit, functioning therein have rendered hundreds of decisions to which the lawyers of this nation turn when they search for controlling decisions on Indian land questions. None of these cases arising in Oklahoma, involving treaties, Congressional acts, or restrictions, are analyzed in the Circuit Court's opinion here.

This in a small measure may account for the confusion that seemed to exist in the trial judge's mind when appellants sought to make proof of Amey Thlocco's restricted status under Federal Acts. He inquired if it was sought "to put this Oklahoma restriction" on the lands in question; then rendered his decision in three words: "No can do." (R. 227, 228)

The Circuit Court's opinion show, in our opinion, that it was content to accept the findings of fact and conclusions of law of the trial judge without an examination of the record. It made no attempt to analyze, distinguish or apply pertinent Federal statutes or decisions. Certain Acts are cited in the foot-note in the opinion (See Appendix, *infra*, pp. 49 s.s.). We submit that instead of constituting a proper basis for the Circuit Court's conclusion, these Acts in reality support the contentions of appellant, Amey Thlocco, as to her full blood restricted status.

The opinion proper cited only four cases, none of which, we think, are applicable to the question involved. One of

these was a Texas Supreme Court opinion and three were from the Oklahoma Supreme Court.

The Texas case (which incidentally was the second opinion by that court on the same subject and state of facts and reversed the former decision) has no application because of the court's error in its definition of the purported trust. This is the case of *Gulf Production Company et al* v. *Continental Oil Company, et al.*, 164 S. W. (2) 488. If this case has any application, then the opinion could only be correct if the purported trust were an express trust.

The case of *Oklahoma Natural Gas Corp.* v. *Lay*, 51 P. (2) 580, (Okla.), has no application herein because it involved the rescission on a contract of an aged person who was not under guardianship and no guardianship question was involved.

The second Oklahoma case referred to is *In re Nitey's Estate*, 52 P. (2) 215. It has no application to the fact situation here because it involved the validity of a will made by a person under guardianship where the facts showed that the will was (a) equitable, (b) made after safeguards had been thrown around it and it had been approved by the Federal officials charged with protecting Indians.

Mere reference is made to the third Oklahoma case, *Shelby* v. *Farve*, 126 P. 764, and we submit that an examination of this case shows that the reasoning there-

under and the results of the opinion bolster petitioners' contention and weaken the position of Magnolia.

The Circuit Court opinion says that the Texas statustes of limitation may be applied as a bar to Amey's recovery because she has not been adjudicated to be a person of unsound mind in the State of Texas. It then implies that although Amey Thlocco was mentally incompetent as found by the Oklahoma courts, she was not a "person of unsound mind". The opinion then refers to Section 15, Title 16, Oklahoma Statutes, for a definition of incompetency. The definition cited is a definition under the Chapter on Contracts and who may contract, and not a definition under Guardian and Ward. The applicable sections under Guardian and Ward, Oklahoma Statutes, provide that a guardian may be appointed for a person who is "a minor or of unsound mind" (Guardian and Ward, Title 30, Section 8) or of "a person incapable of taking care of himself or managing his property" (Guardian and Ward, Title 58, Section 852).

Mental incompetency to manage an estate and unsound mind are synonymous insofar as capacity to do business. Ballentine's Law Dictionary.[11] On this point the opinion

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[11] In illuminating language United States District Judge (now United States Circuit Judge) Robert L. Williams in March, 1933, described Amey Thlocco in an opinion in another case (Kiker v. United States, 63 Fed. (2) 957 (8 Cir.) where she had been swindled, thus: "I find that Amey Thlocco was incompetent, and incapable of understanding and appreciating the effect of the transaction. * * * But we cannot avoid the conclusion that Amey Thlocco, true to the common disposition of her race, is grossly careless of her interests and improvident in affairs of a business nature, and Kiker must have known that he was taking

wholly ignores the applicable Oklahoma statutes and refuses to recognize the adjudication of the Oklahoma courts on this point, striking down the Oklahoma judgments in a collateral proceedings in a Texas Federal district court which has no probate powers.

Since the lands involved came to Amey in lieu of funds (R. 227, 535) received by her from restricted properties, the lands were and are restricted in her hands. She could not today, although these lands are situated in Texas, execute a valid conveyance on same except through the approval of the county court in Oklahoma having jurisdiction over her estate, or of the Secretary of the Interior, or of both. Should she die today possessed of these lands her full blood son and daughter could not transfer these lands inherited from her except by conveyance properly approved. This because of the Congressional Acts. The fact that the lands happen to be located in the state of Texas instead of Oklahoma makes no difference. Amey has a personal restriction against her because of her status. Murray v. Ned, *supra*. Any Acts passed by Congress affecting

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advantage of that weakness. * * * It was exhibited by Amey as soon as the $15,000 came into her hands. The royalties during Teewee's life were paid to the Superintendent of the Five Civilized Tribes, and that was continued after his death. She was willing to make the sacrifice, whatever it might be when measured in a way that no appeal to her, for the primitive thrill of buying whatever she wanted and spending without restraint for awhile. She already had an automoble, but as soon as she got the $15,000 under her control she bought two or three more, furnished her half-brother with money to buy one, and loaned some of it to a friend or friends. Kiker must have known of this weakness, and he took advantage of it. That is a species of fraud to the keen sense of a Chancellor who administers the functions of a Court of conscience."

the status and properties of a full blood Indian are effective as to properties of these Indians in any state in which such properties happen to be located. This for the fundamental reason that the Indians are wards of the United States Government and not of the respective states.

Prior to the passage of the Act of Congress of January 27, 1933 (Appendix, *infra*, pp. 49 s.s.) unscrupulous persons sought out Indians who had considerable funds on hands or income from oil properties and would procure from them agreements making these parties trustees. The unfaithful trustees would then make fake purchases of properties from friends at exorbitant prices and by divers methods defrauded their wards. Congress then passed the 1933 Act to stop this nefarious practice. This Act was in effect when the deed to the property in question to Mainard as trustee was executed in 1934. In making this deed to the purported trustee the terms of the Act were not complied with and the trust was void in Mainard's hands.

Section 1 of the 1933 Act provides "that all funds and other securities now held by, or which may hereafter come under the supervision of, the Secretary of the Interior * * * are hereby declared to be restricted, and shall remain subject to the jurisdiction of said Secretary until April 26, 1956." This Act does not say that it applies only to funds or properties so long as they are in Oklahoma. Suppose, for example, an Oklahoma restricted In-

dian had $50,000 of restricted funds which were deposited in a Dallas, Texas or a Kansas City, Missouri bank and that later a portion of these funds were invested in lands in one of these states. These lands would be restricted under the provisions of this 1933 Act the same as the funds were restricted. This regardless of the state in which the lands were located.

In the case at bar no attempt was made to follow the terms of this Act in the creation of a trust for Amey Thlocco. The purported trust was therefore void and the judgment of the trial court as affirmed by the Circuit Court was erroneous.

The Texas Federal district court had no probate authority to appoint a guardian or to pass upon the status of competency of one already adjudicated incompetent by a proper court of the state of her residence. Nor did it have the right to set aside these adjudications in a collateral proceedings. In so doing the Circuit Court's opinion at bar now holds that neither it nor the Federal district court in Texas is under any constitutional duty to accord any faith or credit to the judgment of the Oklahoma courts. This is contrary to many opinions of the Supreme Court of the United States and particularly *Strader* v. *Graham*, 10 How. 82, 93, 13 L. Ed. 337; *Ellis* v- *Davis*, supra; *Merrill* v. *United States*, 140 Fed. (2) 603 (10th Cir.), and *Poorman* v. *Carlton*, 253 Pac. 424.

Moreover, since Amey Thlocco had never resided in any state except Oklahoma this ruling of the Texas federal courts is an usurpation of judicial power expressly forbidden by Section I, Article IV, Constitution of the United States, and Section 28, U. S. C. A. 687, enacted May 26, 1970

An incompetent citizen of Oklahoma could only be divested of her property in Texas as provided by the Texas Statutes, Articles 4285 ss. (Appendix, *infra*, pp. 64) *Neal* v. *Holt*, 69 S. W. (2) 603; *Redmon* v. *Leach*, supra; *Martinez et al.* v. *Gutierrez, et al., supra; Wilkinson* v. *Owens, et al. supra; American Surety Co. of New York* v. *Fitzgerald, supra; Neblett* v. *Valentino, supra; Kelsey* v. *Trisler et al., supra*; *Jones et al.* v. *Sun Oil Company, et al., supra; Gulf Production Co.* v. *Oldham et al., supra; Pure Oil Co.* v. *Clark, supra; Texas & N. O. Ry. Co.* v. *Jones, supra.*

No Texas court has ever held that Section 7425a, Revised Statutes of Texas, applies to a fact situation such as we have here. In the one case relied upon (*Gulf Production Co.* v. *Continental Oil Co., supra*) all parties involved were adults; none were incompetent, none had nonresident guardians; and none of the parties were full blood restricted Indians. That case went off on the question of notice. The opinion emphasized that the record did not reveal any conduct of the defendant in error inconsistent with the definition of "innocent purchaser"

as defined in *Pomeroy on Equity*, Sec. 1048, and followed in *Houston Oil Company of Texas* v. *Hayden*, *supra*. Further, the opinion there is conclusive that the defendants in error acquitted themselves of the burden imposed upon them by Article 6627, Revised Statutes of Texas (Appendix, *infra*, p. 65)

Under the fact situation here Magnolia had both actual and constructive notice. Moreover, Article 7425a, RCS of Texas, could only apply to an express trust which petitioners contend did not exist here. For definitions of express, resulting and constructive trusts see: *Restatement of the Law, Trusts*, pp. 5 & 6; *Restatement of the Law, Restitution*, p. 642; 65 C. U. "*Trusts*", pp. 223, 224, 225; *Testerman* v. *Burt*, 289 P. 315, 143 Okl. 220; *Rollow* v. *Taylor*, 104 Okl. 275, 231 P. 224; *Restatement of the Law, Trusts*, pp. 1244, 1245, 1249, *Restatement of the Law, Restitution*, par. 160, (g).

Magnolia was not and could not have been an innocent purchaser as declared by the opinion: (1) It had actual notice through its district agent and lease purchaser, Dunaway, who knew the facts prior to the purported purchase of the lease by Shunatona; (2) it had notice of facts which would put a reasonably intelligent person upon inquiry, which, upon investigation, would have revealed the true situation.

These facts were (a) the word "trustee" in the deed, which showed that the land were owned by some cestui que

for whom Mainard pretended to act; (b) the immediate offer of this trustee to resell an unrecorded oil and gas lease for ten times the consideration shown in the face of the original lease which he had just received (presumptively only) from Shunatona, and his possession of an assignment of the lease executed by Shunatona with the name of the assignee left blank; (c) the fact that Magnolia had a direct telephone line from its office in Dallas, Texas to Dunaway's office in Wewoka, Oklahoma and could have ascertained the facts in a few minutes time; (d) Magnolia's examining attorney made lengthy requirements after starting to examine the abstracts of title the same day of the purchase (R. 387), but directed no inquiry as to (1) parties in possession of the lands, (2) the true cestui que trust or the terms of the trust made by the cestui que, or (3) why the trustee was selling an assignment of a lease he had just executed to Shunatona four days previously for ten times the consideration he had purportedly received from Shunatona. Attorney Sutton testified he made none of the inquiries set out because he relied solely on the powers of a trustee under Article 7425a, *supra*.

It is significant to note the following portion of Attorney Sutton's title opinion:

> "V. There accompanied the file an original oil and gas lease, executed by Kenneth Mainard, Trustee, to Bat Shunatona, covering said 130¾ acre tract. The lease is dated February 14, 1936, runs for a

primary term of 10 years, bears the usual ⅛ royalties, provides for an annual rental of $130.00 commencing one year after date, payable to lessor or by deposit to lessor's credit in the Security National Bank, Wewoka, Oklahoma; is written on a Mid-Continent 88 Revised Form, which is a commencement form, contains no unusual provisions, is regularly executed and has not been filed for record. There also accompanied the file an assignment of said lease in blank by Bat Shunatona. * * *" (R. 390)

Article 6627, RCS of Texas, provides:

"All bargains, sales and other conveyances whatever of any lands, tenements, and hereditaments * * * and all deeds of trust and mortgages shall be void as to * * * subsequent purchasers for a valuable consideration without notice, unless they shall be acknowledged or proved, and filed with the clerk to be recorded as required by law * * *."

Magnolia was presented with the unrecorded lease and assignment in blank and this company later filed both of these instruments for record after it had issued its check in favor of Shunatona.

The presentation of these instruments, unrecorded, was notice to the Magnolia of any deficiences or weaknesses in Shunatona's lease.

The Magnolia was not an innocent purchaser under the law an dhad constructive notice of Amey Thlocco's ownership of the lands in question.

This goes to the question of whether Mainard's trust was an express trust (if a legal trust existed, which we deny) as found specifically by the opinion, or whether he was a constructive or resulting trustee under the fact situation.

The opinion holds, by inference, that if Mainard's trusteeship is not an express trust the Magnolia would not be an innocent purchaser. With this inference we agree.

It was not an express trust since Amey Thlocco was incapable of creating a trust because (1) the lands came to her in lieu of restricted funds and only the Secretary of the Interior could have created a lawful trust for her (Act of January 27, 1933) Appendix, *infra*, pp. 49 s.s.); (2) she was a person non sui juris and incapable of comprehending the meaning of a trust or its purpose (R. 228, 229); (3) there was no purpose in creating the trust in the manner sought by Ledbetter and contended for by Magnolia except solely to evade the Texas laws of guardianship and ward; this voided the purported trust as violative of the expressed policy of the Texas statutes relative to Guardian and Ward. To say the opinion is correct and that an express trust was created would have the result of abolishing resulting and constructive trusts in Texas and would make all trusts in that state, contrary to the decisions, express trusts. If there was a legal trust here it was a resulting or constructive trust.

One who purchases trust property with actual or constructive notice of the trust steps in the shoes of the original trustee and the statutes of limitation will not run in favor of either. Neither can such purchaser be a bona fide purchaser. *Beach on Trusts and Trustees*, Sec. 670, 137 A. L. R. 469; *Bailey* v. *Glover*, 88 U. S. 342, 22 L. Ed. 636; *Humble Oil & Refining Co.* v. *Campbell*, 69 Fed. (2) 671, 5th CCA; *Anding* v. *Perkins*, 29 Tex. 348; *Hand* v. *Errington*, 238 S. W. 567 (Tex. Civ.); 242 S. W. 722 (Sup. Ct.).

The trial court found that a compromise judgment entered in an Oklahoma Federal court, in accordance with a stipulation of agreement executed by Amey Thlocco by and through her attorneys and approved by the Attorney General of the United States, operates as a ratification of the lease in question by Amey Thlocco, although the Magnolia was not a party to the suit.

Apparently the court was confused since ratification does not arise out o fentry of judgment. The matter here involved is, strictly speaking, not a raitification at all but, if anything, an estoppel by judgment. A ratification arises immediately from an act of the party. 19 Am. Jur., 637; Par. 73, 19 Am. Jur., 709-710; Vol. 4, Words & Phrases, 2d Series, p. 127. The situation here resulted immediately from a decree of the court, participated in by the parties through their consent to its entry.

In a case involving somewhat similar circumstances, *Donahue* v. *Vosper*, 243 U. S. 59, 61 L. Ed. 592, the plaintiff brought suit to declare certain deeds to be void, the defendant by answer set up a consent decree previously entered in a United States Court which he contended was a conveyance operating as estoppel against plaintiff. The Supreme Court of the United States held that no such estoppel could exist for the reason that the decree must be construed by the nature of the suit, and that such a construction was beyond the intention of the decree. In the case at bar the Federal court in Oklahoma in its judgment specifically provided that said judgment should not estop Amey Thlocco from instituting or maintaining any action or suit to recover property belonging to her except the mineral interest involved in that action.

In the case of *Downs* v. *Hubbard*, 123 U. S. 189, 31 L. Ed. 114, the United States Supreme Court held that a decree of a circuit court in another action could not operate as evidence in an action brought by a stranger to that record, and that a stranger to that record could not avail himself of an estoppel by which he was not himself bound.

So, in the case at bar the decree entered in the Federal court in Oklahoma cannot operate as evidence against Amey Thlocco, and since Magnolia is not bound by that decree, it cannot avail itself of that decree as an estoppel against Amey Thlocco.

As to the manner in which the Federal courts have dealt with attempts to obtain ratification of void instruments and settlements with full blood Indians we call the Court's attention to the following cases: *Ewert* v. *Bluejacket*, (8 Cir.) 259 U. S. 128, 66 L. Ed. 858; *Kendall* v. *Ewert*, (8 Cir.) 259 U. S. 137, 66 L. Ed. 862; and *Whitchurch* v. *Crawford*, (10 Cir.) 92 Fed. (2) 249.

The case at bar, Thlocco v. Magnolia Petroleum Co., is now cited in the Federal Reporter system, 141 Fed. (2) 934. The third syllabus reads:

> "Indians. The statutes for the protection of Indians do not remove Texas lands from the operation of Texas laws or prevent the running of Texas statutes of limitations. Act May 27, 1908, 35 Stat. 315, as amended by Act May 10, 1928, 45 Stat. 495; 25 U. S. C. A. par. 409a, 412a; Act Jan. 27, 1933, 47 Stat. 777."

While the opinion itself and not the syllabus may be the law of the case, yet the syllabus here will be considered and quoted as the law by the legal fraternity hereafter.

If Amey Thlocco were sui juris and had not been declared an incompetent in Oklahoma, then it might be argued that the Texas state statutes of limitations and adverse possession would run against her alienation of these lands through a legally appointed trustee, provided these lands were not subject to the bar of restrictions under Congressional Acts. It is our contention that the

Texas statutes cannot be applied against her for two reasons: (1) her full blood restricted status; and (2) her adjudicated incompetent status.

We submit that the Congressional Acts cited and under the three cases, *Ward* v. *United States*, 10 Cir. 139 F. (2) 79, *United States* v. *Williams*, 10 Cir., 139 Fed. (2) 83, and *Murray* v. *Ned*, 10 Cir., 135 Fed (2) 407, make Amey Thlocco's a restricted status under the fact situation here.

If the United States Government were now suing or should hereafter file suit in behalf of Amey Thlocco against Magnolia to recover the lands in question, then the statutes of limitations would not run against the United States Government. There is a long line of cases to this effect: *Schrimpsher* v. *Stockton*, 183 U. S. 290; *Ewert* v. *Bluejacket*, 259 U. S. 129; *Mullen* v. *Simmons*, 234 U. S. 192; *Minnesota* v. *United States*, 305 U. S. 382, and the recent case of *United States* v. *Hellard*, supra.

Since this Court now has before it in this record the same parties litigant, towit, Amey Thlocco and Magnolia Petroleum Company, and has before it the same state of facts that would be adduced in the event the United States Government should hereafter bring suit against Magnolia for the same recovery as prayed for herein, we see no reason why this Court should not at this time grant certiorari and decide this important question.

We desire to call the Court's attention to one other fact, towit: When Congress intended to permit state statutes to affect the rights of Indians, special Acts applying thereto have been passed. For example, as applied to Oklahoma, the Act of April 12, 1926, 44 Stat. 239 (Appendix, *infra*, p. 52) provides that the Oklahoma state statutes of limitations should run against Indian lands. No such special act was ever passed as applied to the statutes of limitations in the State of Texas. Sec. 5, State Courts, pp. 379, 380, 381, Handbook of Federal Indian Law by Felix S. Cohen.

Conclusion

The judgment below should be reversed.

Respectfully submitted,

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